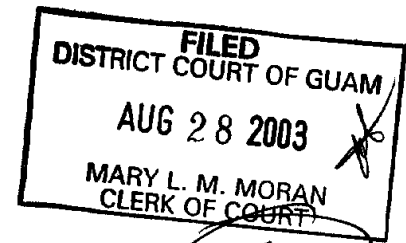


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5 Attorney for Plaintiff: GOLAM R. SARKER

6
7
8 IN THE UNITED STATES DISTRICT COURT
9 DISTRICT OF GUAM

10 GOLAM R. SARKER,) Civil Case No. CIV02-00023
11)
Plaintiff,)
12)
vs.) MOTION TO WITHDRAW AS
13) COUNSEL FOR PLAINTIFF WITH
HYATT REGENCY GUAM, MIHIR ROUT,) MEMORANDUM OF POINTS AND
14 and DOE OFFICERS 1 through 10,) AUTHORITIES
15)
Defendants.)
16)

17 MOTION TO WITHDRAW AS COUNSEL FOR PLAINTIFF

18 COMES NOW, THE VANDEVELD LAW OFFICES, P.C., by *Curtis C. Van de*
19 *veld, Esq.*, to move the court for permission to withdraw as counsel of record for Plaintiff,
20 GOLAM R. SARKER, upon the grounds and bases as more fully set forth in the incorporated
21 Memorandum of Points and Authorities and Declaration of Gabriella Rippel.

22 MEMORANDUM OF POINTS AND AUTHORITIES

23 STATEMENT OF FACTS

24 On August 7, 2002, the undersigned filed a complaint for damages on behalf of
25 the plaintiff in this matter.

GOLAM R. SARKER vs. HYATT REGENCY GUAM, MIHIR ROUT, and DOE OFFICERS 1 through 10.
MOTION TO WITHDRAW AS COUNSEL FOR PLAINTIFF WITH MEMORANDUM OF POINTS AND AUTHORITIES
Civil Case No. CIV02-00023
Page 1

1 An offer of settlement is pending to Plaintiff's counsel about which counsel is
2 unable to confer with Client to receive instruction on the disposition of the offer.

3 All filed documents and other documents received by counsel were prepared
4 for dissemination to client for his retrieval. On July 1, 2003, Client retrieved the Scheduling
5 Order for this matter executed and filed in December 2002. Client was advised that he needed
6 to maintain strict disclosure to counsel of his contact information, needed to meet with
7 counsel about fast approaching case deadlines and to review discovery disclosures. On July
8 14, and thereafter, numerous documents were received by counsel for dissemination to Client.
9 Staff of counsel, Gabriela Rippel has attempted to contact Client at all phone numbers
10 previously provided by Client to counsel, and through a request of Guam Telephone
11 Authority information to see whether Client was issued a new phone number. All efforts to
12 contact Client have proven fruitless and Client has not met his obligations to meet and confer
13 with counsel.
14

15 Evidence has been presented to counsel that raises a question whether or not
16 the claims of Client are meritorious in contradiction to assertions made by Client which
17 counsel is unable to discuss with Client.

18 Counsel is informed that dispositive motions may be filed in this case and
19 counsel will be unable to adequately represent Client due to lack of contact with him.
20

21 ARGUMENT

22 The Model Rules of Professional Conduct, 1990 version, are the standards of
23 conduct under Guam law. MRPC Rule 1.16, requires that a lawyer shall terminate a
24 representation by withdrawal if the representation will result in violation of the rules of
25 professional conduct, Id., (a)(1), or, may withdraw when the client fails substantially to fulfill

1 an obligation to the lawyer regarding the lawyer's services and has been given reasonable
2 warning that the lawyer will withdraw unless the obligation is fulfilled, Id. (b)(4), or other
3 good cause for withdrawal exists, Id. , (b)(6).

4 MRPC Rule 1.1, requires counsel to act competently in representing a client.
5 Competent representation requires active participation and assistance of the Client. In the
6 absence of the Client, counsel cannot adequately assist Client because Counsel lacks the
7 essential witness for most of the proof matters in the case. This rule will be violated if the
8 representation were to continue.
9

10 MRPC Rule 1.2(a), requires counsel to act in accordance with the decisions of
11 the Client as to the objectives of the litigation. As dispositive motions are made and an offer
12 of settlement is pending, counsel must consult client for his decision. Due to the Client failing
13 to maintain contact information, counsel is unable to discharge his responsibilities under this
14 rule.

15 MRPC Rule 1.3, requires counsel to act with reasonable diligence and
16 promptness in performance of counsel's duties. The inability to communicate with Client
17 prevents counsel from discharging this duty.

18 MRPC Rule 1.4, requires counsel to keep client reasonable informed about the
19 matter. Client's failure to keep counsel informed about his contact information prevents
20 counsel from discharging this responsibility.
21

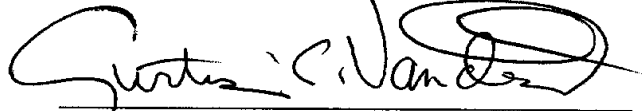
22 MRPC Rule 3.1, prohibits a lawyer from bringing a claim that lacks merit.
23 Certain factual information contradicting facts alleged by Client have been brought to
24 counsel's attention. Without the ability to discuss these matters with Client, counsel is unable
25 to determine whether or not the facts are disputed and the claim continues to have merit.

1 CONCLUSION

2 Due to Client's failure to maintain contact with counsel, counsel must
3 withdraw from the representation and the court should grant counsel's motion.

4 Respectfully submitted: this Monday, August 25, 2003.

5 THE VANDEVELD LAW OFFICES, P.C.

6 

7 Curtis Charles Van de veld, Esq.

8 Attorney for Plaintiff

9 GOLAM R. SARKER

10
11
12 CCV/ccv
VPP/G.R. SARKER/CV00145